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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,006	01/05/2006	Pierre Messier	102785-337-NP2	9028
24964 7590 09/26/2008 GOODWIN PROCTER LLP ATTN: PATENT ADMINISTRATOR 620 Eighth Avenue NEW YORK, NY 10018				
EXAMINER				
DIXON, ANNETTE FREDRICKA				
ART UNIT		PAPER NUMBER		
3771				
MAIL DATE		DELIVERY MODE		
09/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/528,006

Applicant(s)

MESSIER, PIERRE

Examiner

Annette F. Dixon

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16 and 18-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the request for continued examination filed on September 5, 2008. Examiner acknowledges claims 1-9, 11-16, 18-27 are pending in this application, with claims 1 and 9 having been currently amended, and with claim 10 and 17 having been cancelled.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 2, 2008 has been entered.

Drawings

3. The drawings are objected to because Applicant's recent submissions of replacement drawings do not include Exhibits A and B. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The use of the trademark ACCUWEB® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Niemeyer (4,951,664).

As to Claims 1 and 9, Niemeyer discloses a combination comprising: a permeable facemask (10) having a periphery adapted to abut a user's face (Figures 1 and 2); a compressible gasket (30) formed of a permeable filtering material on said periphery of said facemask (Figures 1 and 2) adapted to sit between said periphery of said facemask and a face of the user thereby filling any space that may exist there between; said permeable facemask (10) having an area for filtering air which is interior to said periphery and not covered by said gasket (30). Regarding the limitation of providing an air path therethrough, gasket (30) allows air to be forced out of or absorbed into the gasket (30) during compression and expansion. (Column 5, Lines 1-6). Further, regarding the additional material (32) covering the gasket (30), Niemeyer discloses the material is impermeable to particles as small as 5 microns. (Column 5, Lines 7-28). As such, it is understood that air may pass through this material as air has a smaller particle size than 5 microns.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-8, 11-16, 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemeyer (4,951,664) in view of Rezuke et al. (5,582,865).

As to Claims 2, 7, 8, and 15-16, Niemeyer discloses a permeable facemask, yet does not expressly disclose the incorporation of active agents within the compressible gasket. However, at the time the invention was made the use of active agents within the compressible gasket were known. Specifically, Rezuke teaches the compressible gasket may include active agents such as: ion exchange resins and further discloses the use of impregnated iodine for the purpose of improving the filtering efficiency. (Column 3, Lines 48-49, and Examples II, VIII, and IX). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Niemeyer to include an active agents such as: ion exchange resins, as taught by Rezuke to impart superior filtering qualities to the filtering mask.

As to Claims 3-6, and 11-14, Rezuke teaches the composite filter element (16) is made of a non-woven polyester batting. (Figures 1, 2, 2a, and 2b; and Column 2, Line 45 thru Column 3, Line 20).

As to Claims 18 and 19, Rezuke teaches the fiber matrix is utilized to entrap active agents. (Column 5, Lines 65-67).

As to Claim 20, Rezuke teaches the non-woven material is polypropylene (Column 2, Lines 66-67).

As to Claim 21, Rezuke teaches the use of active agents such as ammonia, which is a biocide. (Column 5, Line 51-52).

As to Claim 22, Rezuke teaches the use of active agents such as Bromine, a halogen (Column 5, Line 31-33), and activated carbon (Columns 4, 5, 6, and 7).

As to Claims 23 and 24, Rezuke teaches the use of metals for the active agent such as zinc chloride (Column 4, Lines 60-67).

As to Claim 25, Rezuke teaches the filter based material includes an electrical charge. (Column 3, Lines 48 and 49).

9. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemeyer (4,951,664) in view of Rezuke et al. (5,582,865) as applied to claim 25 above, and further in view of Dhanakoti (4,927,692).

As to Claims 26 and 27, the system of Niemeyer /Rezuke discloses a facemask, yet does not expressly disclose the layering of the electrostatic charge and about 25 kilovolts. However, at the time the invention was made the use of a layered electrostatic charge and about 25 kilovolts was known. Specifically, Dhanakoti teaches the use of a multi-layer design (Figure 3c) in the application of electrostatic charges (Column 2, Lines 5-10) to a facemask for the purpose of evenly distributing the electrostatic charge across the facemask thereby reducing charge densities. (Abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Niemeyer /Rezuke to include the multilayer electrostatic charge as taught by Dhanakoti, for the purpose of enhancing filtering effect of the facemask.

Response to Arguments

10. Applicant's arguments filed September 5, 2008 have been fully considered but they are not persuasive. Applicant assertions the prior art made of record does not disclose or teach the combination of a permeable facemask and a gasket made of a permeable filtering material wherein the gasket enables air to flow there through. However, the Examiner respectfully disagrees. Regarding the limitation of providing an air path therethrough, gasket (30) allows air to be forced out of or absorbed into the gasket (30) during compression and expansion. (Column 5, Lines 1-6). Further, regarding the additional material (32) covering the gasket (30), Niemeyer discloses the material is impermeable to particles as small as 5 microns. (Column 5, Lines 7-28). As such, it is understood that air may pass through this material as air has a smaller particle size than 5 microns. Thus, for the aforementioned reasoning, the rejection of the claims has been maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

Annette F Dixon
Examiner
Art Unit 3771

/Annette F Dixon/
Examiner, Art Unit 3771